
BZA-1836
BLACK SWAN ENTERPRISES, LLC
Variances

STAFF REPORT
May 17, 2012

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REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner is requesting the following variances for a proposed peat mining operation special exception (also on this agenda, BZA-1835):

1. To eliminate the fencing requirement on the north, east and west side of the mining pit, and only installing the required fencing along the portion of the property that fronts on CR 50 W, instead of the complete 6' security fence enclosure (UZO 4-9-7(d)); and
2. To eliminate the 20' wide Type C bufferyard requirement on all sides of the proposed pit (UZO 4-9-7-1).

The property is located where CR 50W ends at CR 790N, more commonly known as 7910 N CR 50W in Tippecanoe 18 (NW) 24-4.

For AREA ZONING PATTERNS, AREA LAND USE PATTERNS and TRAFFIC AND TRANSPORTATION and ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

See BZA-1835

STAFF COMMENTS:

The UZO outlines specific development standards for mining operations (whether more typical aggregate mining or mining of non-metallic minerals as in this request). These requirements include a 100' open use setback from all property lines (this setback is shown); *total* enclosure by a permanent 6' fence (variance request #1) and a 20' wide type C bufferyard (variance request #2).

The intent of these development standards is to provide protection and to mitigate any negative effects of an adjacent mining operation—visually, audibly and from a safety standpoint. Since active mining will last for a significant period of twenty years, staff cannot recommend elimination of any part of the fence or the bufferyard. Staff could concede, however, that because of existing vegetation on the site that petitioner could utilize the vegetation where sufficient to serve as screening. However the east and north sides, where the mining operation is nearest the property line and road, requires a bufferyard.

Regarding the ballot items:

1. The Area Plan Commission September 21, 2011 determined that the variances requested **ARE NOT** use variances.

And it is staff's opinion that:

2. Because the proposed mining operation may be active for up to twenty years from the grant of approval, a bufferyard would have ample time to mature and provide both screening and a barrier to neighboring properties, especially on the north and east sides of the site. Additionally, a fence enclosure would protect this long-term land use. Therefore, granting both variances **WILL** be injurious to the public health, safety, and general welfare of the community.
3. With regard to both variance requests, use and value of the area adjacent to the property included in the variance request **WILL** be affected in a substantially adverse manner. The fencing and bufferyard requirements in the ordinance are intended to ensure the safety of the neighbors and the property owner from liability concerns. However, staff can support eliminating the bufferyard requirement where the existing vegetation provides a sufficient buffer surrounding the limits of the proposed pond.
4. The terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district. While this site is unique in its wetland designation, there is nothing unusual in terms of its size, shape or topography that necessitates these variances. Additionally, all permanent mining operations (those lasting more than one year) are required to install 6' fencing and a 20' wide Type C bufferyard.
5. Because meeting the standards of the ordinance does not impede petitioner's use of the property for mining, strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance.

Note: Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. It is only petitioner's desire to deviate from the standards of the ordinance that is the impetus of these requests; the hardship involved **IS** self-imposed.

5b. There is no relief for a self-imposed hardship, variance request #1 **DOES** provide only the minimum relief. However, variance request #2 **DOES NOT** provide minimum relief; staff could support eliminating the bufferyard requirement where existing vegetation is significant enough to provide screening on the southern and western property lines.

STAFF RECOMMENDATION:

Variance #1: Denial

Variance #2 as requested: Denial